C.A.
Criminal Law — Possession of ganja — attempting to export ganja — Grounds [illegible] — whether hearsay & whether sufficient to test samples — whether R.M. required to give reasons for finding of fact S291 Judicature R.M. Act. appeal dismissed.

✓ comp

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO. 92/87

COR: The Hon. Mr. Justice Rowe, President
The Hon. Mr. Justice Carey, J.A.
The Hon. Mr. Justice Forte, J.A.

R. v. GLEN STENNETT

Lowell Marcus for the Appellant

J. Moodie & Miss Donaree Banton for the Crown

3rd February, 1988

FORTE, J.A.:

On the 28th of March, 1987 at about 2:15 p.m., Constable Richards, of the Canine Division, was at the Norman Manley International Airport in Kingston. At the airport he stood at the chute where luggage for passengers are packed and checked. With him was a sniffer dog "Britt". "Britt" sniffed one suit-case that arose some suspicion, a suit-case which was burgundy in colour and on which was a tag numbered o98-171, and another numbered 96. The tag also had the name Stennett written on it. The suit-case was destined for loading as passenger luggage on Air Jamaica Flight 071 which was scheduled to depart for Toronto, Canada.

Constable Richards proceeded to the airplane where he saw the appellant Glen Stennett; told him that there is a suit-case outside that he would like him to identify, and then asked him for his travel

documents. The appellant gave his documents to Constable Richards. His travel documents were his passport, plane ticket and an identification card. On the plane ticket were two baggage identification tags clipped together. The appellant accompanied Constable Richards to gate No. 1 where Constable Richards showed him the burgundy suit-case and asked him if it belonged to him. The accused said 'Yes.' Constable Richards then asked the accused to open the suit-case. The accused produced from his pocket a key with which he opened the suit-case, and having searched the suit-case, Constable Richards found what he described as a false compartment and in that compartment he saw six packages wrapped in black plastic material and covered with masking tape. He opened those packages and saw what he described as vegetable matter resembling ganja, subject matter subsequently found by the Government Analyst to be ganja. Having cautioned the accused and having told him it was ganja, the accused said "Officer me have me visa sah and a man pay mi fare and ask me to carry it up fi him sah." The Constable then took the appellant to the police station at the airport. According to the Constable, he asked the appellant the name of the person who asked him to take the suit-case and the accused refused to give that name. He then arrested and charged the accused for possession of ganja and attempting to export ganja. After caution the accused said, "Officer please do something for me, a beg you a chance."

Now, at the trial, the accused denied most of that; he denied that he told the constable the words the constable alleged that he told him. His defence was that at the airport he saw an old friend of his who asked him to put the suit-case among his luggage as the friend's luggage was too much and he would be over-weight. He denied knowing anything about the ganja that was found in the suit-case, having denied that the suit-case belonged to him.

Nevertheless, the learned Resident Magistrate rejected that defence and accepted the evidence for the prosecution and found the appellant guilty. Before us the following ground to appeal, which I set out verbatim, was argued by Mr. Marcus -

> "That the evidence of the Government Analyst, though allowed in by Section 23 of the Evidence Law Chapter 118 is hearsay evidence and when contradicted by evidence, an Oath becomes nullified and the learned trial judge ought to have disregarded the evidence contained in the Government Analyst certificate."

This very point was dealt with in the case of Glassington Outar and Morris Outar v. R. (unreported) R.M.C.A. 28/87, decided by this Court on the 31st July, 1987 in which Mr. Justice White, Judge of Appeal, giving the judgment of the Court, at page 14 said this, and I quote:

> "Suffice it to say that the procedure adopted of taking samples from the individual packages was eminently a practical way of testing the contents of the 70 packages. Otherwise, it would entail a detailed check of every particle of the contents of each package, which would be an enormous and time-consuming task. It cannot be cogently argued that it is imperative for the Government Analyst to say that he had tested the samples - and for him to state what is the result of the rest on the samples themselves - before he can certify that the contents of the packages were as stated in the certificate, [exhibits 10 and 11]."

That passage deals with exactly the same point argued by Mr. Marcus and this Court sees no reason for disagreeing with the words of White, J.A., in that case.

For those reasons, we find no merit in Ground 1 of Mr. Marcus' grounds of appeal.

I turn now to Ground 3 in the Supplementary Grounds, which was argued by Mr. Marcus. The answer to that point is found in Section 291 of the Judicature Resident Magistrate Act, which required the learned trial judge to give nothing but findings of fact. Mr. Marcus'

point that the judge's reason in this case bears no consideration of the legal submissions made by counsel for the defendant, is a point that cannot really be argued before this Court. For those reasons the appeal is dismissed, and the conviction and sentence is affirmed.